

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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MARCEL D. PERRY,

Plaintiff,

8:20-CV-0165  
(GTS/DJS)

v.

CITY OF ALBANY, as a municipal corporation;  
DETECTIVE JOHN REGAN, of City of Albany  
Police Dept.; DETECTIVE MICHAEL FARGIONE,  
of City of Albany Police Dept.; DETECTIVE  
ANTHONY SCALISE, of City of Albany Police  
Dept.; DETECTIVE JOSEPH CHROMCZAK, of  
City of Albany Police Dept.; and PAROLE  
OFFICER ROSE LeBARRON, of Albany Area office,

Defendants.

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APPEARANCES:

MARCEL D. PERRY  
Plaintiff, *Pro Se*  
109 Ford Avenue  
Troy, New York 12109

GLENN T. SUDDABY, Chief United States District Judge

**DECISION and ORDER**

Currently before the Court, in this *pro se* civil rights action filed by Marcel D. Perry (“Plaintiff”) against the City of Albany, a parole officer, and four employees of the City of Albany Police Department (“Defendants”) pursuant to 42 U.S.C. § 1983, is United States Magistrate Judge Daniel J. Stewart’s Report-Recommendation recommending that Plaintiff’s Fifth Amendment claim be *sua sponte* dismissed with prejudice for failure to state a claim and that the remainder of Plaintiff’s claims be *sua sponte* dismissed without prejudice and with leave

to amend for failure to state a claim, pursuant to 28 U.S.C. §§ 1915A(a),(b) and 1915(e)(2)(B). (Dkt. No. 8.) Plaintiff has not filed an Objection to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.)

After carefully reviewing the relevant papers herein, including Magistrate Judge Stewart's thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation.<sup>1</sup> Magistrate Judge Stewart employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein. To those reasons, the Court adds only one minor point.

Although Magistrate Judge Stewart recommended that the various claims in the Complaint be dismissed without prejudice and with leave to amend those claims, the Court respectfully construes that recommendation as one that those claims be dismissed with prejudice unless Plaintiff successfully amends those claims. *See Wilmer v. Albany County Police*, 19-CV-1416, 2020 WL 137240, at \*1 & n.2 (N.D.N.Y. Jan. 13, 2020) (Suddaby, C.J., adopting Report-Recommendation of Dancks, M.J.); *Logan v. Town of Windsor*, 18-CV-0593, 2018 WL 3853996, at \*1 & n.3 (N.D.N.Y. Aug. 14, 2018) (Suddaby, C.J., adopting Report-Recommendation of Peebles, M.J.).

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<sup>1</sup> When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a "clear error" review, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.*; *see also Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at \*1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) ("I am permitted to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotation marks omitted).

**ACCORDINGLY**, it is

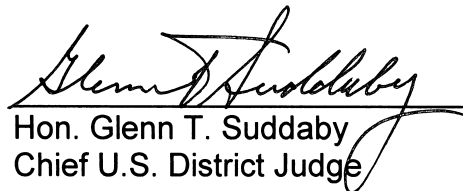
**ORDERED** that Magistrate Judge Stewart's Report-Recommendation (Dkt. No. 8) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

**ORDERED** that Plaintiff's Fifth Amendment claim is *sua sponte* **DISMISSED** with **prejudice** pursuant to 28 U.S.C. §§ 1915A(a),(b) and 1915(e)(2)(B); and it is further

**ORDERED** that the remaining claims in Plaintiff's Complaint (Dkt. No. 1) **SHALL BE** *sua sponte* **DISMISSED** with **prejudice**, and without further order of the Court pursuant to 28 U.S.C. §§ 1915A(a),(b) and 1915(e)(2)(B) **UNLESS**, within **THIRTY (30) DAYS** of the date of this Decision and Order, Plaintiff files an **AMENDED COMPLAINT** that corrects the pleading defects identified in Magistrate Judge Stewart's Report-Recommendation; and it is further

**ORDERED** that, should Plaintiff timely file an Amended Complaint, it shall be referred to Magistrate Judge Stewart for review without further Order of this Court.

Dated: June 19, 2020  
Syracuse, New York

  
Hon. Glenn T. Suddaby  
Chief U.S. District Judge